

MACOMB INTERCEPTOR ACQUISITION

SETTLEMENT AND RELEASE OF CERTAIN RATE DISPUTES

In consideration for i) the purchase price of the Macomb Interceptor System as that term is defined in the Macomb Interceptor Acquisition Agreement dated September 2, 2010; ii) principal and interest adjustments for projects never built or projects not included or not fully included in the sewer rates to Macomb County; and iii) the other mutual undertakings by the parties herein, Detroit, Macomb County, and the Macomb Interceptor Drain Drainage District ("District") agree as follows:

Except as expressly provided below, this Agreement (the "MID Agreement") does not amend, nullify or repeal the provisions of a certain Settlement and Release of Certain Rate Disputes executed by Macomb County, Oakland County, the Oakland-Macomb Interceptor Drain Drainage District and Detroit on October 22, 2009 (the "OMI Settlement") which remains in full force and effect except as amended herein.

1. Waiver and Release of Claims

Detroit and Macomb County waive and release any claims with regard to the following matters:

- a. The cost of all projects and contracts shown on Schedule 3.8 to the MID Agreement and the calculation of all credits, charges and adjustments set forth in that Schedule.

b. Claims related to the amount of and liability for outstanding debt on the following meters:

- i. CH-S-5;
- ii. CT-S-1;
- iii. CT-S-2;
- iv. Ct-S-3;
- v. CT-S-4;
- vi. FR-S-1;
- vii. HR-S-1;
- viii. HR-S-2;
- ix. HR-S-3;
- x. MA-S-2;
- xi. ST-S-5;
- xii. ST-S-6;
- xiii. SY-S-3;
- xiv. MC-S-1; and
- xv. Meter Contract CS-1292.

c. Detroit's claims related to recovery of charges from Macomb County associated with the "Clinton Township Control Facility" (PC-687¹ and CS-1240) that was not built but for which capital costs were included in the rates of other customers during several rate years;

d. Any project or improvement for which capital costs and debt service could have been allocated solely to the Macomb County Wastewater Disposal District ("MCWDD") in the rates through June 30, 2010 but was not.

¹ Erroneously referred to as either PC-63 or PC6897 in Sections 1(d)(iii) and 2(a) respectively of the OMI Agreement.

- e. Claims against Macomb County for payments due after December 2009 for the 1978 Temporary Repairs for the 15 Mile-Hayes sewer break.
- f. Except as provided in Section 2 below and rights arising under this Agreement, Macomb County waives and releases its claims against Detroit and Detroit waives and releases its claims against Macomb County with regard to all other known or unknown claims or disputes with regard to rates charged to the MCWDD as a separate user class for all rate years up to and including the FY2009/10. To the extent that there was an objectionable or allegedly incorrect or erroneous rate practice in rate year FY2009/10 that continues after that rate year, the parties to this Agreement reserve their rights to challenge such practices for rate years after FY2009/10 and seek recovery of associated rates, and this Agreement shall not be interposed as a defense to such claims.

2. Continuing Liability, Reserved Claims and Post 2008/09 Rates

- a. Section 1(f) of the OMI Agreement is amended as follows. The final cost of the inspection of and repair to the Oakland-Macomb Interceptors and the Macomb Interceptors under DWSD Contract # CS-1372 had not been incurred at the time of the Closing on the Oakland-Macomb Interceptor System. The parties to this MID Agreement agree that the final cost of CS-1372 attributable to the OMI System is \$2,470,898 as set forth in Revised Schedule 3.8 to the OMI Agreement (dated March 31, 2010) and that the balance of the final cost of CS-1372 is \$19,283,707 as shown in Schedule 3.8 to the MID Agreement.

- b. Section 1(h) of the OMI Agreement is amended as follows. To the extent that any costs or debt service associated with the matters set forth in Sections 1(b) to 1(g) of the OMI Agreement continued in the FY2009/10 rates for the MCWDD they will either be credited against the purchase price at the closing on the Macomb Interceptor System, or be incorporated into a mutually agreed upon Look Back adjustment.
- c. Macomb County agrees it remains liable for continued payment of the 1978 Permanent Repairs for the 15 Mile-Hayes sewer break through a final payment in august 2011.
- d. In the FY2010/11 rate year and subsequent rate years, Detroit will not include the operating cost or debt service for the meters and contract set forth in Section 1(b) in the rates charged directly or indirectly (whether as a suburban common to all charge or some other charge) to the District or the MCWDD.
- e. Macomb County and Detroit do not waive or release rights to or claims arising out of adjustments to rates that result from either "Look Back" adjustments for matters not addressed in this Agreement for prior rate years for which a Look Back has been finalized as of the date of Closing, or any rate revisions or corrections that would apply to all First Tier customers.
- f. To the extent that Clinton Township has a right to assert a claim with regard to certain industrial wastewater charges imposed on customers in that portion of Clinton Township whose flow was directed to the Mt. Clemens POTW, which right Detroit disputes, Clinton Township does not waive or release its right to

assert such a claim nor does Detroit waive or release any defenses to such a claim or waive or release any claim against Clinton Township.

3. **Adjustment of Macomb Interceptor Purchase Price**

- a. Detroit and Macomb County agree that in calculating the purchase price of the Macomb Interceptors, Detroit has correctly credited Macomb County with principal paid on projects never built but included in the MCWDD rates (Mt. Clemens Arm; Clinton Township Control Facility, PC-6897 and CS-1240; Garfield Sewer Rehabilitation, PCI-45) plus interest at 5% for 6 years on the initial debt in the rates; and has correctly charged Macomb County interest at 5% for 6 years on projects that were built but not included or only partially included in MCWDD rates (Lakeshore Arm, PCI-42A; Garfield Repair, CS-978; Odor Control, CS-1292), which credits and charges are set forth in cumulative fashion in Schedule 3.8 to the MID Agreement.
- b. Detroit and Macomb County acknowledge that the matters set forth in Section 2(b) of the OMI Agreement have been resolved to Macomb County's satisfaction prior to the Closing of the Macomb Interceptor Acquisition or will be resolved by Detroit producing the engineering and project files for Contracts PCI-42A, CS-1288, CS-1241, CS-1288i and CS-1292 within 60 days after Closing.

4. **Summary of Post Closing Debt**

- a. The parties agree that after the Macomb Interceptors are transferred to Macomb County, the only debt service included directly or indirectly in the sewer rates for the District or the MCWDD, other than debt service allocated "common-to-all" or

“suburban common-to-all,” will be debt service associated with capital improvements at the Northeast pump station (excluding meters at the Northeast Pump Station).

- b. Macomb County acknowledges that the purchase price for the Macomb Interceptor System may be added to the DWSD Sewer Capital Improvement Fund and used to fund future capital projects. Macomb County agrees that inclusion of debt service or capital charges associated with such future capital projects, calculated in a manner consistent with past ratemaking practices or in a manner to which all First Tier Customers have agreed, will not violate Detroit’s obligations under Sections 2(d) or 4(a).

5. **Adjustment to Resolve Disputes**

Section 5 of the OMI Agreement is amended as follows. Macomb County and Detroit agree that the \$3,000,000 Adjustment To Resolve Disputes that was agreed to by the parties to the OMI Acquisition Agreement shall be applied as follows: \$2,179,748 to the OMI Purchase Price and \$870,252 to the Macomb Interceptor Purchase Price and that the latter amount is shown as Balance of OMI/Macomb Misc. Rate Settlement on Schedule 3.8 to the MID Agreement..

6. **Effective Date**

This Agreement is contingent on and only effective upon the closing on the Macomb Interceptor System transaction.

[Signatures on the following page]

Macomb County on behalf of the Macomb County Wastewater Disposal District

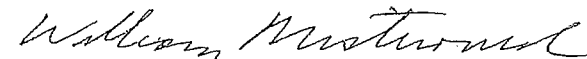


William Misterovich

Chief Deputy Macomb County Public Works Commissioner

County Agency for the Macomb County Wastewater Disposal District

Macomb Interceptor Drain Drainage District

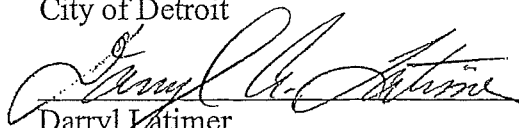


William Misterovich

Acting Chairperson

Macomb Interceptor Drain Drainage District

City of Detroit



Darryl Latimer

Deputy Director

Detroit Water and Sewerage Department